

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Before the Board of Patent Appeals and Interferences

Applicant : John E. Auer
Serial No. : 09/942,516
Filed : August 30, 2001
For : A SYSTEM AND METHOD FOR PROCESSING PATIENT
INFORMATION
Examiner : Dilek B Cobanoglu
Art Unit : 3626

REPLY BRIEF

May It Please The Honorable Board:

This is Appellant's Reply Brief in response to the Examiner's Answer dated March 20, 2008. No fee for filing this Reply Brief is believed due. Should a fee be due please charge this fee to Deposit Account No. 50-2828. Appellants waive an Oral Hearing for this appeal.

Please charge any additional fee or credit any overpayment to the above-identified Deposit Account. Enclosed is a single copy of the Brief.

I. REAL PARTY IN INTEREST

The real party in interest of Application Serial No. 09/942,516 is the Assignee of record:

Draeger Medical Systems, Inc.
16 Electronics Avenue
Danvers, MA 01923

II. RELATED APPEALS AND INTERFERENCES

There are currently, and have been, no related Appeals or Interferences regarding Application Serial No. 09/942,516.

III. STATUS OF THE CLAIMS

Claims 1-6, 8-16 and 18-23 are rejected and the rejection of claims 1-6, 8-16 and 18-23 are appealed. Claims 7 and 17 have been cancelled in a previous response.

IV. STATUS OF AMENDMENTS

All amendments were entered and are reflected in the claims included in Appendix I.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The Summary of the Claimed Subject Matter provided in the Appeal Brief filed on January 24, 2008 is incorporated herein by reference and Applicant respectfully submits that no further summary is needed.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1-6, 8-16 and 18-23 are rejected 35 U.S.C. 103(a) as being unpatentable over Schoenberg et al. (U.S. Patent Pub. No. 2005/0125256 A1), hereinafter "Schoenberg," in view of Wallace et al. (U.S. Patent No. 6,305,373 B1), hereinafter "Wallace." Claims 7 and 17 have been cancelled in a previous response.

VII. ARGUMENT

For the reasons presented in the Appeal Brief filed on January 24, 2008, which are incorporated herein by reference, and for the following reasons, Schoenberg, when taken alone or in combination with Wallace, does not make the present claimed arrangement unpatentable. Thus, reversal of the Final Rejection (hereinafter termed "rejection") of claims 1-6, 8-16 and 18-23 under 35 U.S.C. 103(a) is respectfully requested.

The arguments below address the Examiner's Answer dated March 20, 2008 ("Answer") and are supplemental to the Appeal Brief filed in this case. The Arguments in the

previously filed Appeal Brief are fully pertinent and are to be considered in conjunction with the following arguments.

Rejection of claims 1-6, 8-16 and 18-23 under 35 U.S.C. § 103(a) over Schoenberg et al. (U.S. Patent Pub. No. 2005/0125256 A1) in view of Wallace et al. (U.S. Patent No. 6,305,373 B1)

Reversal of the rejection of claims 1-6, 8-16 and 18-23 under 35 U.S.C. § 103(a) as being unpatentable over Schoenberg (U.S. Patent Pub. No. 2005/0125256 A1) in view of Wallace (U.S. Patent No. 6,305,373 B1) is respectfully requested because the rejection makes crucial errors in interpreting the cited reference. The rejection erroneously states that claims 1-6, 8-16 and 18-23 are made unpatentable over Schoenberg in view of Wallace.

CLAIMS 1-3, 6, 8-10, 21 and 23

The Answer asserts on pages 8-9 that Schoenberg describes “subsets of patient information ... identified or prioritized by user selection of job function,” and thus, Schoenberg discloses “prioritizing the acquired data for display in a desired order” as recited in claim 1 of the present arrangement. Applicant respectfully disagrees. As described on pages 6-7 of the Appeal Brief filed on January 24, 2008, Schoenberg merely describes that access is provided by user selection of specific data sets identified by job function icons. However, in Schoenberg, there is no mention or suggestion of “**prioritizing** the acquired data for display in a desired order” as recited in claim 1 of the present arrangement. The Answer on page 9 further argues that in Schoenberg, “[v]arious reports can be generated from the stored data. The user can combine different sets of data from different sources to obtain customized summaries of the patient’s status and progress” and “[t]herefore subsets of patient information is identified or prioritized by user selection of job function.” Applicant respectfully submits that this cited paragraph [0042] of Schoenberg merely describes how reports of role specific data that are relevant to a particular member of a medical team can be generated. “For example, a doctor, by virtue of his or her job function, would generally have an interest in viewing a certain subset of a patient’s data from BSU-1. Similarly, a nurse, by virtue of his or her job function, would generally have an interest in viewing a different subset of that same patient’s data” (paragraph [0057]). Thus, the customized summaries in Schoenberg are merely based upon the permission or preference of a user with a certain job function (i.e., doctor, nurse, etc.) and is not a prioritization of “the acquired data for display in a desired order” as recited in claim 1 of the present arrangement.

The Answer on pages 9-10 argues that Schoenberg teaches a primary display 12 and associated display controller 14 and that a user can choose one to four simultaneous

displays in various formats including graphical, tabular, bar, etc. Applicant respectfully submits that this argument was addressed on page 7 and the top of page 8 of the Appeal Brief filed on January 24, 2008. Additionally, the Answer on page 10 argues that “Appellant admits that Schoenberg teaches user entry of medical notes and acquisition of medical laboratory results (remarks; page 7, last paragraph).” Applicant respectfully submits that merely showing user entry of medical notes and acquisition of medical laboratory results, as in Schoenberg, does not disclose or suggest a **first, second and third panel for display**, as recited in the present claimed arrangement. The present arrangement recites “a first panel for displaying on said display user specified parameters of said ordered acquired data in a graphical format, a second panel for displaying user specified parameters of said ordered acquired data in tabular format, and a third panel for displaying a user selected one of user-entered medical notes, medical laboratory results, and ventilator data” and the mere user entry of medical notes or acquisition of medical laboratory results, as in Schoenberg, does not disclose or suggest the feature combination recited in claim 1.

The Answer on page 10 argues that, the Application describes that a user may use a slider bar 352 to focus on a specific time period and that Schoenberg discloses such a slider bar. Applicant respectfully disagrees. Schoenberg merely describes that data is shown “in one minute intervals of time. The time scale can be selectively changed by a user for any or all of the images” (paragraph [0054]). Merely changing a time scale from one minute intervals to any other intervals is not related to “a **slider bar** for navigating through the user specified parameters in tabular format” as recited in claim 1 of the present arrangement. Applicant fails to see how changing time intervals, as in Schoenberg and as argued in the Answer is equivalent to “a slider” bar used to **navigate** “through the user specified parameters in tabular format” as in the present claimed arrangement. Even if Schoenberg changed the time interval from one minute to something different, this Schoenberg feature is completely unrelated to, and does not disclose or suggest, “a slider bar for navigating through the user specified parameters in tabular format” as recited in claim 1 of the present arrangement. Consequently, Schoenberg cannot disclose or suggest “said first panel includes a cursor, said cursor being **controlled by said slider bar**, said slider bar controlling said cursor and enabling **concurrent user navigation in both said first and second panels** through said user specified parameters in both graphical format and tabular format” as recited in claim 1 of the present arrangement. Additionally, please refer to page 8 and the top of page 9 of the Appeal Brief filed on January 24, 2008 for further arguments distinguishing the present claimed arrangement from Schoenberg with Wallace.

The Answer on page 11 asserts that one cannot show nonobviousness by attacking references individually where the rejection is based on a combination of references.

Applicant respectfully submits that the arguments presented in the Appeal Brief filed on January 24, 2008 were made in order to show that as the individual systems of Schoenberg and Wallace do not disclose or suggest the features of the present claimed arrangement, the combined system of Schoenberg and Wallace also do not make the present claimed arrangement unpatentable. Thus, the arguments made in the Appeal Brief filed on January 24, 2008 show that the individual systems of Schoenberg and Wallace do not disclose or suggest the features of the present claimed arrangement relied on in the Rejection and therefore, the combined system of Schoenberg and Wallace cannot make the present claimed arrangement unpatentable.

Additionally, the Answer on page 11 argues that "Schoenberg teaches multiple graphical displays of patient information, which can be viewed simultaneously, each of data sets can be displayed in a variety of formats, including graphical, tabular, bar chart and pie chart forms, with or without split screen. Therefore Schoenberg teaches first, second and third panels, which are in any format described above." The Answer also argues that the user entry of medical notes and acquisition of medical laboratory results, as in Schoenberg, is equivalent to the third panel of the present arrangement. Applicant fails to see how the graphs in Schoenberg, when displayed alone or simultaneously, are equivalent to "a first panel for displaying on said display user specified parameters of said ordered acquired data in a graphical format, a second panel for displaying user specified parameters of said ordered acquired data in tabular format, and a third panel for displaying a user selected one of user-entered medical notes, medical laboratory results, and ventilator data" as recited in claim 1 of the present arrangement. Furthermore, the Answer on the bottom page 11 argues that Schoenberg teaches "an acquisition processor for acquiring data associated with a patient from at least one of the plurality of sources, the processor prioritizing the acquired data for display in a desired order." Applicant respectfully disagrees. Please see the above arguments and the Appeal Brief for further arguments distinguishing the present claimed arrangement from Schoenberg with Wallace.

As for the argument presented in the Answer on page 12 regarding the motivation and reason to combine the systems of Schoenberg and Wallace, please see the top of page 10 of the Appeal Brief for further arguments distinguishing the present claimed arrangement from the combination of Schoenberg and Wallace. Consequently, in view of the above remarks and the remarks submitted in the Appeal Brief filed on January 24, 2008, it is respectfully requested that this rejection be withdrawn.

CLAIM 4

Claim 4 is dependent on independent claim 1 and is considered patentable for the reasons presented above with respect to claim 1, and with respect to the arguments made in the Appeal Brief filed on January 24, 2008. The Answer on pages 12-13 argues that Schoenberg teaches a controller that includes a user device that is responsive to a user selection action for generating a selection signal. The user device may be any kind of selection device, for example a keyboard (with cursor control), mouse, etc. Applicant fails to see how the controller that includes, for example, a keyboard (with cursor control) that is responsive to a user selection action, is in any way related to or discloses or suggests that “a cursor is displayed **indicating a selected time** during the selected time frame” as recited in claim 4 of the present invention. Moreover, the Answer argues that the time scale can be selectively changed by a user in Schoenberg. However, Schoenberg is silent as to how the time interval is changed; and nowhere does Schoenberg disclose or suggest that “a cursor is displayed indicating a selected time during the selected time frame” as recited in the present arrangement. Although Schoenberg may describe a keyboard that has cursor control, the keyboard is merely used by a controller and is not equivalent to “a cursor” that “is displayed indicating a selected time during the selected time frame” as recited in the present arrangement. Additionally, please refer to page 12 and the top of page 13 of the Appeal Brief filed January 24, 2008 for further arguments distinguishing the present claimed arrangement from Schoenberg and Wallace. Consequently, in view of the above remarks and the remarks submitted in the Appeal Brief filed on January 24, 2008, it is respectfully requested that this rejection be withdrawn.

CLAIM 5

Dependent claim 5 is dependent on claims 1 and 4, and is patentable for the same reasons presented above with respect to claims 1 and 4, and with respect to the arguments made in the Appeal Brief filed on January 24, 2008. The Answer on pages 12-13 argues that Schoenberg teaches a controller that includes a user device that is responsive to a user selection action for generating a selection signal. The user device may be any kind of selection device, for example a keyboard (with cursor control), mouse, etc. Applicant fails to see how the controller that includes, for example, a keyboard (with cursor control) that is responsive to a user selection action, is in any way related to or discloses or suggests that “a time display field displays the time corresponding to the **selected cursor time**” as recited in claim 5 of the present invention. Moreover, the Answer argues that the time scale can be selectively changed by a user in Schoenberg. However, Schoenberg is silent as to how the time interval is changed; and nowhere does Schoenberg disclose or suggest that “a time display field displays the time corresponding to the selected cursor time” as recited in the present arrangement. Although Schoenberg may describe a keyboard that has cursor control,

nowhere in Schoenberg is there mention or disclosure of a "selected cursor time." Therefore, Schoenberg and Wallace neither disclose nor suggest that "a time display field displays the time corresponding to the selected cursor time" as recited in claim 5 of the present arrangement. Additionally, please refer to page 13 of the Appeal Brief filed January 24, 2008 for further arguments distinguishing the present claimed arrangement from Schoenberg and Wallace. Consequently, in view of the above remarks and the remarks submitted in the Appeal Brief filed on January 24, 2008, it is respectfully requested that this rejection be withdrawn.

CLAIMS 11, 12, 13, 16 and 22

Independent claim 11 is patentable for the reasons presented in the Appeal Brief filed on January 24, 2008. Additionally, the Examiner's comments in the Answer with respect to claim 11 are the same as with respect to claim 1. Therefore, as claim 11 is treated the same as claim 1 in the Answer, please refer to the claim 1 arguments presented above. Consequently, in view of the above remarks with respect to claim 1 and the remarks submitted in the Appeal Brief filed on January 24, 2008, it is respectfully requested that this rejection be withdrawn.

CLAIMS 14 and 15

Claims 14 and 15 are patentable for the reasons presented in the Appeal Brief filed on January 24, 2008. Additionally, the Examiner's comments in the Answer on pages 12-13 with respect to claims 14 and 15 are the same as with respect to claims 4 and 5. Therefore, as claims 14 and 15 are treated the same as claim claims 4 and 5 in the Answer, please refer to the claim 4 and claim 5 arguments presented above. Consequently, in view of the above remarks with respect to claims 4 and 5 and the remarks submitted in the Appeal Brief filed on January 24, 2008, it is respectfully requested that this rejection be withdrawn.

CLAIMS 18 and 19

Independent claim 18 is patentable for the reasons presented in the Appeal Brief filed on January 24, 2008. Additionally, the Examiner's comments in the Answer with respect to claim 18 are the same as with respect to claim 1. Therefore, as claim 18 is treated the same as claim 1 in the Answer, please refer to the claim 1 arguments presented above. Consequently, in view of the above remarks with respect to claim 1 and the remarks submitted in the Appeal Brief filed on January 24, 2008, it is respectfully requested that this rejection be withdrawn.

CLAIM 20

No specific additional arguments are presented in the Answer with respect to claim 20. Therefore, please refer to page 27 of the Appeal Brief filed January 24, 2008 for arguments distinguishing the present claimed arrangement from Schoenberg and Wallace.

Consequently, in view of the above remarks and the remarks submitted in the Appeal Brief filed on January 24, 2008, it is respectfully requested that this rejection be withdrawn.

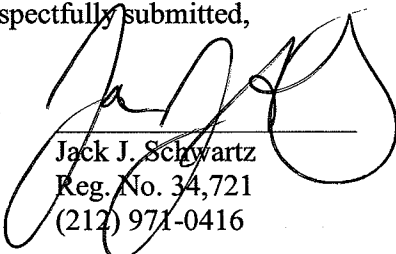
VIII CONCLUSION

Schoenberg and Wallace, when taken alone or in combination, neither disclose nor suggest the features claimed in independent claims 1, 11 and 18. Additionally, as claims 2-6, 8-10, 21 and 23 are dependent on claim 1, claims 12-16 and 22 are dependent on claim 11 and claims 19-20 are dependent on claim 18, it is respectfully submitted that these claims are also patentable over Schoenberg in view of Wallace. Accordingly it is respectfully submitted that the rejection of claims 1-6, 8-16 and 18-23 should be reversed.

Accordingly, based on the arguments set forth above and in the Appeal Brief filed on January 24, 2008, it is respectfully submitted that the rejection of claims 1-6, 8-16 and 18-23 should be reversed.

Respectfully submitted,

By



Jack J. Schwartz
Reg. No. 34,721
(212) 971-0416

Jack Schwartz & Associates, PLLC
1350 Broadway, Suite 1510
New York, NY 10018
May 6, 2008